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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Dear Mr Caton,

PETITION OF MSS COALITION FOR PARTIAL RECONSIDERATION (ET DOCKET
95-18)

/ I attach an original and nine copies of the United Kingdom
Governments comments on the comments filed in this matter.

*Yours sincerely,
Nicholas Davidson.*

Nicholas Davidson
First Secretary
(Trade Policy)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The United Kingdom Government's Comments on the Comments on the
petition of the MSS Coalition for Partial Reconsideration.
(ET Docket 95-18)

LONDON 30 June 1997

INTRODUCTION

ICO Global Communications, a member of the MSS Coalition is a UK based, multinational company with investors from 44 countries that will provide world-wide satellite personal communications service (SPCS). The UK acts as the ITU Notifying Authority for ICO.

The UK shares the opinion that the decisions of the FCC in relation to **first**, the requirement on certain SPCS operators to pay for relocation of present users of the so-called 2 gigahertz band and **second** allocation of frequencies to the Broadcast Auxiliary Service (BAS), is an unreasonable barrier to entry to the US market and hence causes these systems problems in entering the global market.

SUMMARY

The UK is concerned that the actions of the FCC in its Order allocating frequency to those operators wishing to use the so-called 2 GHz MSS bands for SPCS will act as a serious barrier to entry to that market in the US.

We are further concerned that because of the need for compatible frequencies, this will affect the ability of those operators to introduce their services world-wide. The Order may also be seen as encouraging other countries to breach the intention and spirit of the negotiations in the WTO Group on Basic Telecommunications with regard to avoiding technical barriers to entry.

Countries world-wide are now at the crucial but potentially fragile stage of deciding whether or not to sign up (as appropriate) to the CEPT decisions on the introduction of SPCS and to the GMPCS MoU. We are concerned that the FCC action will undermine efforts to ensure a widespread acceptance of both measures. There is a real danger that many in CEPT (the 43 country intergovernmental European Committee on Posts and telecommunications) and in the Global Mobile Personal Communications Systems MoU Group will wish to reconsider their attitudes, which have to date been largely positive.

COST OF ENTRY

The cost to SPCS operators of re-locating existing BAS users from the allocated portion of the 2 gigahertz band is estimated at upwards of US\$1bn. This problem is greatly exacerbated by consequential re-locations made necessary by the intended upward extension of the BAS band. We support the reflection by some respondents of the MSS Coalition's concern that these costs represents a very considerable proportion of the total cost of a global SPCS System. Neither this nor any similar cost has been imposed on directly competitive US based systems using other frequency bands. It could be argued that this approach discriminates in an unfair way between those US based systems and the members of the MSS Coalition.

GLOBAL ACCESS FOR SPCS

During the WTO GATS negotiations, the US repeatedly stressed the importance of an open and fair system of access to national markets. The US offer circulated to the Group on Basic Telecommunications specified that any procedures for the allocation of scarce resources including frequencies, should be carried out in an objective, timely, transparent and non-discriminatory manner. The US negotiators specifically recognised that frequency allocation measures can act as barriers to trade and urged the negotiating partners to avoid such action. This was recorded in the analysis of satellite questions circulated by the US Chief Negotiator on 16 September 1996 and quoted in extract below¹.

By creating substantial additional costs, the present Order has the effect of rendering the spectrum allocation to MSS effectively unusable by both the MSS Coalition and other future potential MSS users of the 2 GHz bands. This action seems to run directly against the intentions of the US in raising this issue during the WTO negotiation and has the effect of creating administrative and financial barriers to the entry of competitive systems to the US market.

Such action, particularly by a Member with the influence of the US and taken after the conclusion of the WTO negotiations, also has the potential to encourage other Members and non-Members to adopt similar technical barriers to trade in services, both in the satellites and other fields, which could endanger US and other liberalised countries' aims of opening other markets to these services.

¹ US Delegation Discussion Paper on GBT Satellite Issues 13 September 1996

"1.6..... Members must and do maintain the sovereign right to allocate and assign frequencies domestically as appropriate for their domestic environment.

"However, it is certainly possible for frequency allocation and assignment measures taken by WTO members to act as disguised barriers to individual service suppliers for trade in satellite services. This is particularly the case for new services and for global and regional mobile satellite systems which require access to the same frequency allocations regionally and world wide.

"GATS Article VI requires measures relating to allocation of frequency to be administered in a "reasonable, objective and impartial manner." The reference paper additionally requires such allocation to be carried out "in an objective, timely, transparent and non-discriminatory manner."

"Taken together, these two obligations of Members forbid any national spectrum assignment with the purpose or effect of blocking or unreasonably limiting access by providers of another Member."

ACTION IN EUROPE

This discriminatory action contrasts strongly with the approach taken by the 43 member countries of the CEPT who have co-operated to facilitate Europe-wide access for Globalstar, ICO, Iridium and other SPCS systems. The aim has been to accomplish this with none of the financial penalties imposed in the US allocation of these bands.

The UK, amongst others, has considered carefully the impact on its services of the introduction of mobile-satellite service (MSS) systems in the relevant bands², taking into account that SPCS systems will offer wide benefits to UK customers and that the UK has given its agreement to the relevant Radio Regulation spectrum allocations. The use of these bands has given rise to significant difficulties associated with their current use. The UK is currently making arrangements to provide access for Iridium, Globalstar, Odyssey, ICO and other systems.

The UK has worked within the CEPT to facilitate CEPT-wide access to frequency spectrum by the mobile earth stations (MESs) of S-PCS systems. The CEPT has developed a 'family' of S-PCS Decisions, one of which identifies the frequencies to be used by the MESs of each system intending to offer S-PCS. The UK expects to sign the Decision and so to provide access to the bands as identified there.

However, before S-PCS systems can have access to frequencies within the UK, conclusions must be reached on a number of other issues. These include interference from both up and down link use in the band 1610.6 - 1613.8 GHz. Also, in the 2 GHz band, there is a need to re-locate Fixed Service users: the UK has been involved in the development of a relevant Decision within CEPT and has facilitated discussions at a national level which will permit the implementation of this Decision.

With CEPT the UK has been involved in the development of a methodology to calculate the required size of protection zones around radio astronomy sites. This work has lead directly to the development of a draft ITU-R Recommendation.

In discussions of all these issues, the UK and other European administrations have attempted to find outcomes which are acceptable to both parties. None of these outcomes have resulted in heavy financial penalties on the incoming S-PCS service.

These actions have been taken in Europe in the understanding that the benefits of SPCS can only be achieved on a Global basis and with a properly competitive structure within the industry. This can only be achieved if access to spectrum is also on a global basis and this approach applied in all countries.

² 1610 - 1626.5 MHz, 2483.5 - 2500 MHz, 1980 - 2010 MHz and 2170 - 2200 MHz. The MSS systems intending to operate in these bands are defined as offering satellite personal communications services (S-PCS).

CONCLUSION

The effect of the high cost of re-location of users of the 2 GHz bands (which has been coordinated internationally through the ITU for these services) is to create a substantial barrier to foreign entry to the US market. Directly comparable US operators, having access to spectrum where this is not an issue would have a major and unjustified competitive advantage.

30 June 1997